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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/800,673	03/08/2001	Craig Howard Doan	011525-273	4837

7590

07/30/2002

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EXAMINER
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MADSEN, ROBERT A

ART UNIT	PAPER NUMBER
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1761

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DATE MAILED: 07/30/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/800 673

Applicant(s)

DOAN ET AL

Examiner

Robert Madsen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4 6) ☐ Other

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hamann et al (US 4761294) in view of Manvell (US 4927653), Lagares Corominas (US 5374437), and Street (US 5229154).

Regarding claims 1-7, Hamann et al. teach a method of preparing French fried potato comprising the steps of obtaining chilled par-fried potato pieces and surface pasteurizing the potato pieces in a pasteurizing apparatus, which is an impingement oven, as recited in claim 2, designed raises the surface temperature and removes excess moisture (Column 2, line 29-60, Column 4, line 63 to Column 65, line 18). Hamann et al. teach the surface-pasteurized potatoes are frozen and then are stored under freezing conditions to inhibit bacterial growth during storage (Column 7, lines 9-29, Figure 1). However, Hamann et al. are silent in teaching the pieces pasteurizing apparatus has an exit into a clean room environment, as recited in claim 1. Also, although Hamann et al. teach heating between 300°F and 450°F, Hamann et al. is silent in teaching a particular final bacterial count as recited in claim 7.

Manvell, who also teaches a method of preparing French fried potato pieces for extended storage without microbial contamination, recognizes it is well known to freeze

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fried potato pieces to prevent microbial growth during storage, but offers an alternative this freezing which provides an longer shelf life without freezing (Column 1, lines 9-25, Column 2, lines 25-44, Column 3, lines 40-65). Manvell is relied on as evidence of the conventionality of providing an exit from a sterilizing, or pasteurizing apparatus (i.e. raises the temperature and removes moisture like Hamann et al.), into a clean room, or aseptic environment as recited in claim 4, having a modified atmosphere as recited in claim 5(i.e. sterile gas in Column 4, lines 65-68), wherein the pasteurized fried potato pieces are cooled, as recited in claim 3, and packaged to obtain an extended shelf life without the need for freezer storage. Manvell teaches this method is less expensive and provides a longer storage time than freezing (Column 4, line 45 to Column 5, line 34, Column 6, lines 9-42, 58-67). Manvell further teaches by aseptically packaging in a modified atmosphere the pasteurized or sterilized condition (i.e. which is reached at a temperature of at least 230°F to kill all harmful and spoilage organisms) is maintained during the shelf (Column 2, lines 51-66).

Street is relied on as further evidence of the general concept of producing extended pre-cooked potatoes (e.g. mashed) wherein the pre-cooked potatoes are pasteurized, cooled and packaged within a modified atmosphere (Abstract, Column 1, line 40 to Column 2, line 55).

Lagares Corominas is relied on as further evidence of the general concept of extending the shelf life of a food product by surface pasteurizing a chilled pre-cooked (like Hamann's par-fried step) product in a pasteurizing apparatus wherein the exit from

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the pasteurizing apparatus is in an aseptic environment for aseptic packaging (Abstract, Figure 1, Column 2, line 16 to Column 4, line 9).

Therefore, it would have been obvious to modify the freezer/storage method of Hamann et al. such that the pasteurization apparatus would have an exit into an aseptic environment for aseptic packaging, as recited in claim 4, with a modified atmosphere as recited in claim 5, cooling the surface pasteurized fried potatoes, as recited in claim 3, and providing a shelf life of at least 60 days as recited in claim 6, since the aseptic packaging/storages method of Manvell provides a longer shelf life and is less costly than freezing. One would have been substituting one known method of packaging/storing fried potato pieces for another for the same purpose: storage of par-fried potato pieces until a finish-cooking step. Additionally, it would have been further obvious that the final microbial counts would be less than 1.0 log CFU/g for mold, for example, and negative for *Listeria monocytogenes*, *Salmonella*, *Clostridium botulinum*, *E. coli* 0157:H7, and *Staph. Aureus* since Hamann teaches heating the pieces to temperatures of 300-450°F and Manvell teaches heating to 230°F is a lethal temperature and packaging under aseptic condition will assure that all harmful and spoilage organisms are killed, and one would have been substituting one method of packaging for another.

### **Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Penderson et al. (US 5753291), Doenges (US 4632838), and


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Bonnett et al. (US 4900576) all teach the conventional chilled par-fried surface pasteurized potato pieces wherein the surface pasteurization step is a second par-fried step. Bonnett et al. also teaches the chilled par-fried potato pieces are bulk stored for up to 6 months prior to the surface pasteurization step.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (703)305-0068. The examiner can normally be reached on 7:00AM-3:30PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703)308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are (703)872-9310 for regular communications and (703)872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0061.

  
Robert Madsen  
Examiner  
Art Unit 1761  
July 23, 2002

  
**MILTON I. CANO**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 1700**